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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 766

FRANK E. CANTWELL,

Appellant,

vs.

CLOTILDA ALLEN CANTWELL,

Appellee.

APPEAL FROM THE SUPREME COURT OF INDIANA.

PETITION FOR REHEARING.

FRANK E. CANTWELL, *Pro Se,*
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Rancho Santa Fe,
California.

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Appellant, now appearing *Pro Se,* asks this court to grant a rehearing.

Appellant realizes that many of the facts narrated in this petition are not in the record, but begs this court to consider them in the interests of justice.

Appellant and appellee were married on April 29, 1947, and are the parents of two sons, Frank E. Cantwell, Jr., aged ten years, Peter Allen Cantwell, aged eight years, and one daughter, Clotilda Marie Cantwell, aged five and one-half years.

At the time the parties were married, they agreed to live in the State of California. Appellant was retired, due to

a heart condition, and appellee agreed to live on his income. Appellant was home all day, due to his physical condition, and took care of his sons.

Appellant has always been a good husband and father.

Appellee made frequent and extended trips to the home of her parents in Chicago, Illinois, leaving the boys with appellant.

Appellee knew that appellant had been advised by his doctor to live in a warm climate, because of his health. She knew that he wanted to, and should, live in California. She refused to honor her promise to live in the State of California, demanding they reside in Chicago, either with, or close to, her parents, with whom she spent so much of her time.

On January 22, 1953, appellee deserted appellant; she returned permanently to the home of her parents in Chicago, Illinois.

Appellee wrote loving letters and cards every day to appellant until February 4, 1953; she stated that she wished to consult a psychiatrist in order to break "the chains that bound her to her mother."

Appellant wrote to her frequently, urging her to give only a normal love to her parents and to return to him and their children. Three weeks later, appellee informed him that he was not to write to her, or communicate with her, as she would never write to him, or communicate with him, again.

On March 12, 1953, appellant and his older son visited appellee at her parents' home, and begged her to return home with him. She refused to do so. In April and in May 1953, appellant again visited her at her parents' home, urging a reconciliation, and again asked her parents to cease their baleful efforts and demands that appellee divorce him.

Appellant told appellee of his serious physical condition again, and begged and pleaded with her to go with him and the children to California and establish a happy home for all of them. Appellee refused to do so.

Appellant wrote appellee the following letter, dated May 26, 1953, telling her that he and the boys were going to California and urging her to go with them:

"Dear Sis:

"The boys are so happy to be back here and I cannot describe to you how glad I am to have them at home with me. Chip was stuttering when he returned and seemed under a strain as did Allen. They were black and blue from their dear little bottoms to their feet. Did they have a severe fall on your steep back steps? When I asked them if they had fallen neither one would say. I haven't pressed the subject as neither one will talk of their visit to you or even mention your folks. The big City has made them a bit nervous and I do think we both realize the necessity of a tranquil serene life like they have with me.

"Why don't you return here at once? I feel it is a tragedy for us to miss these wonderful baby days of our daughter. She didn't know me even when I saw here in front of your parent's home. I begged you then to come with us—go to the coast and start a fresh life. You promised both before and after our marriage to live on our beautiful property in California. Won't you redeem that pledge and do your wifely duty to me but *more importantly* to our children? I have told you you can visit your parents for any six weeks of any year. Won't that be enough time to spend with them, Sis? We can give our marriage a fair chance that way. Even your brother Jim agreed when he read that terrible letter from your folks, demanding you divorce me—it probably would be best for us to move to the coast. He wanted me to wait a year, move to Chicago—but Dr. Kerrigan has again warned me my blood pressure and pulse will induce a fatal stroke if I do not get immediate rest and freedom from worry. You told me many times you realized how awful your treatment of me has been. Won't you try to rectify

your errors and do what is right to me? I have treated you as a queen during our marriage.

"We plan to go to the coast early in June. Do say you'll come with us or follow us within a reasonable time. Help me to select a beautiful home to be happy in, please. I shall do all in my power—as I have always done—to make you happy, our children happy. Let's forgive your parents the evil they have done and start over.

"Our love to you—the baby,

"Chip, Allen—Frank."

"As I told you when you came for your things, I can sell the house at once and I shall sever my residence and domicile here—and move to the coast. Come!"

Appellant wrote appellee the following letter on June 8, 1953, from California:

"Dear Sis:

"You'll be glad to know the boys had a splendid trip out here and are enjoying themselves tremendously. Send you their love. The trip, my serious physical condition, was tough on me. Feel miserable.

"I want you to decide once and for all to come back to me with our darling baby. I wish you would forget the divorce demands, the financial demands, and realize that your duties to your parents can be fully adjusted and compatible to your duties as a wife and mother, but that they cannot be so under the present circumstances. The constant long trips to your parents and their influence upon you and your decisions with regard to your home have not been a good influence; I wish you would do what you promised to do when you vowed to 'cleave only to your husband, forsaking all others.' I have done the best I could to try to be a good husband to you. I was disappointed to hear that you had changed your address at the Citizens Bank to your parents' home. I gave you this account as a gift with no strings attached. You know that you have the sole power to sign the checks, and when you left in January, there was nearly $1,300 in it.

"I was distressed beyond description to learn from the boys of their terrible beating you and your father

gave our darling boys, while your Mother held them. Allen, too, had so many marks on him. I assumed they had fallen down your steep steps. Then on June 2nd, Chip and Allen told me of their terror, how Chip tried to call police etc., then of your forcing them to promise not to tell me etc. To beat them with straps until they were black and blue as a result is hard to contemplate. When they arrived home after the visit with you, I asked them how they came to be so bruised. Chip had—still has—black mark on left thigh. Chip also said your father spanked him so hard over spilling his milk, you went after your Dad with a hairbrush to stop him. What a thing for children to witness, to take. How you can put up with this type of life and how you can prefer this type of conduct is beyond me. And how you can contemplate bringing up our little girl in such an atmosphere is impossible for me to understand.

"I want you to know that I fully intend to support you and our darling baby until you return to us. After the $1200 plus the $150.00 is gone or whenever you are low in funds for her support, let me know through Bert Jenner, until we have located a home. This should be enough for you and the baby to join me. If not, let Bert know, and we'll see that you get more money. Tell me that you intend to come back and bring her back to her brothers and to me, both of you live with us as you should. I feel so badly to miss all her baby days. To deprive me of her and her of me and to deprive Chip and Allen and myself of you for no reason is impossible for me to consider.

"I still beg of you to return to Our Lord for divine help and for His guidance. Through His help, we can achieve an understanding of each other and of our wonderful children that may seem impossible to you now while you're living with your folks.

"You had told me of the frequent brutal beatings your Dad and Mother gave to you and your brothers, but tell them that this is no justification for them to beat any of our children. Warn them never to lay a hand on my children again. I never need to spank them—it is a full time job to teach them, to play with them—to do for them—and I do just that as I always

have—always will—with great love. They reason things out so well. Yesterday Chip said, 'Dad, I do not need the small fork—spoon—any more. I am too big for them now.' The waitress thot both of them 'truly remarkable.' You went off in Jan.—I thot for a few days. Wouldn't even return for Chip's birthday party after his pleading with you to do so. The boys will never be separated again if I can help it. They enjoy and love each other more and more. We all should be together sharing the money that I, through the Grace of God, was able to earn and save long before He brought us together. There must have been a divine purpose, Sis, even above and beyond the three beautiful children that we have, in our meeting. You have always known that I can never work again and must have enough to support all of us for as long as we shall live. I need your help in saving and conserving what thru hard work has been granted to me for our use. I cannot live under the baleful influences of your divided loyalties, and a little mature reflection upon the terrible incidents in your parents' home should convince you that this is impossible. Continuing to live in Indiana, so close to your folks, was unwise. I have, accordingly, severed all residence and domicile in Indiana, and Lower California seems to me to be the only answer. I want to buy or build there, and want you to help us get settled. We want you to join us. My health, which was bad when we married, cannot stand the rigors of Chicago winters, and our plans, made before we married, to live in California, should be realized. You were eager to do so then. My health has deteriorated under this fearful strain you have subjected me to needlessly—cruelly.

"Chip and Allen and I need you, Sis, as you first were, a loyal, good wife, full of love for us. We want you with us. We want you to be the mother and the wife that God meant you to be. Our lives belong together, and there is nothing that has ever come up to convince me otherwise. Please tell Bert that you have reconsidered, that you want us and want to live with us as fully as we want you, and plan to bring our darling daughter and sister to our home in California. There never have been any serious difficulties between us that can't be resolved by understanding, sympathy,

and most of all, prayer. Love can always revive any circumstances of fairness, rightness and oneness with. God's help.

"All of our love from all of us to you.

"Frank"

"Could you answer this yourself—with only God's help. It will do wonderful things for our lives."

Appellant left Indiana on June 2, 1953, with his two sons and all their furnishings. He did not "flee" with the boys, but fulfilled their plan to live in a warmer climate, away from the constant and evil harassment of the parents of appellee.

The following letter was written to appellee in 1952 by her parents:

"Tuesday
230 P. M."

"Dear Sister,

"I have started four letters but just couldn't go on but I will answer your letter. You can't make me believe that's it all your fault sick or no sick. I am only 5 years older than Frank and I have my share of illness and your father too. I want to impress on your mind & Franks that we want a divorce in your family. For two people of adult minds to carry on as you have you never had to tell me any of your troubles. I never you or Frank anything. But his wise cracks he made I felt insult too. When we happened to be there to visit you folk on your anniversary and I said we were happy to spend this wonderful day with you Frank spoke up and said yes and sometimes it feels like 50 years. Well you make that out. Then too when he said he was teaching you how to save money and he jumps up and said he was insulted he think it wasn't insulting to me of rearing a lovely girl like you. Of course when he came up to take you and the children up to go home. He no more sat down telling us he wouldn't live in Chicago and reaped three or four time do you think he wasn't *insulting*. Does he think can say

any thing to us as he pleases and we are going to set back. I didn't expect for you & Frank are touchy that its sure taking you 4½ years to strengthen things out. Well that's few of thinks I am writing any more of this junk and every much surprise of you writing about any more about it. Of course you know that's we all love you dearly and that's what wrong with Frank. He should be a happy man that there is a feeling for him to but there much of jealousy in him because he would give anything if all of his family could get along beautiful as ours. Expecting to see you Thursday evening. We will be at Walker's for dinner. I suppose will you about eight or 9.

"All our love to all of you all

"Mother & Dad"

"Dad is not leaving this week. It was to be a week from Thursday eve."

On June 4, 1953, two days after appellant left Indiana, appellee filed the suit for divorce in La Porte County, Indiana. Service was by the leaving of summons at the empty house appellant had permanently left for residence in California.

Appellee obtained a default divorce decree on charges that appellant had a dominating personality, that he treated his dogs (two small cocker spaniels) as human beings, and that he did not give appellee all the money she desired.

Late in 1952, appellant realized the need of protecting his three very young children and established a Trust Agreement for their sole benefit, with certain stocks listed in 1952 Tax Return, after having talked the matter over with appellee, who signed the Trust Agreement and "consented to all the terms and provisions of said agreement and disclaimed any interest in the property constituting the Trust Estate."

In March 1953, the parties filed a joint income tax return for the year 1952, which included certain stocks in 1952 Tax

Return as Taxes were due on them, a copy of which appellee had in her possession when she testified in August 1953 at the default hearing in Indiana. At this hearing, appellee testified and the Divorce Decree states, appellant "is worth approximately $350,000.00 to $400,000.00." In this, she committed perjury, as she knew appellant was worth in all approximately $135,000.00. Yet the Indiana Court awarded her $100,000.00, $12,000.00 attorneys' fees, and $400.00 a month support for the children when she knew the *two boys were living with this appellant in California.* This order amounted to more than appellant possessed, as appellee well knew.

In the appellee's Reply Brief, she stated "the appellant had fled the State of California with his two sons for parts unknown." Thus, appellee deliberately, and with fraudulent intent, created this erroneous impression, when in reality, appellee, on August 29, 1956, with the aid of a gang of thugs with drawn revolvers, brutally kidnapped the two screaming, fighting and completely terrified sons of the parties, and has secreted herself and the three children completely since that date.

Appellant has written (care of appellee's attorneys) over seventy-five (75) letters to his children, has sent them many gifts, and approximately $2000.00. Appellee has refused to give the children the letters, gifts, or checks, most of which she has cashed herself.

In June 1957, appellee filed a petition in the Superior Court of the State of California, for the County of San Diego, in Cause No. 216793, entitled *Clotilda A. Cantwell, Plaintiff*, v. *Frank E. Cantwell, Defendant,* setting forth the Indiana judgment and asking that the Indiana decree be enforced as follows:

On November 13, 1957, an order was entered in the Superior Court of California, San Diego County, which pro-

vided that appellant pay $200.00 per month for the support of the children of the parties, and further as follows:

1. That plaintiff (appellee) shall in no way interfere with the defendant (appellant) and said minor children communicating with each other by mail, shall in no way interfere with said children receiving gifts from the defendant (appellant), and shall in no way conceal from said children the fact that gifts sent by the defendant (appellant) to the children were so sent.

2. That the plaintiff (appellee) shall permit and will make what arrangements are necessary and proper for the said minor children to be visited by the defendant's (appellant's) brother on one occasion each month.

3. That the plaintiff (appellee) shall make such arrangements as are necessary and proper for defendant (appellant) to communicate with all of said minor children by telephone on one occasion each two weeks.

4. That the plaintiff (appellee) shall forthwith advise defendant (appellant), and at all times keep defendant (appellant) informed as to the place of residence, mailing address and telephone number of said minor children.

Appellee has steadfastly refused to comply with this order. In March 1958, her attorney, Daniel Kelly, wrote a letter to the District Attorney of San Diego, California, stating that he "presented a copy of the Order to the Plaintiff and advised her to comply with the terms and conditions thereof; that the Plaintiff informed Mr. Kelly that *she would not so comply.*"

When appellee so refused, the District Attorney of San Diego County, California, wrote to Miss Lillian Giesler, Probation Officer of the La Porte County Circuit Court of Indiana, and told her she should get a hold of the children of the parties, talk with them, and find out how they were

being treated, etc. There was no reply; the court asked appellant to write. Appellant wrote a month ago, and has received no reply.

Appellant has on innumerable occasions tried to effect a reconciliation with appellee and has tried to settle the case with her, but has not been able to accomplish either, as she has ignored all of his letters to her.

Appellant has offered to let the boys decide with which parent they wish to live, even though appellee has had them since August 29, 1956. Appellee has refused to accede to this offer, and has stated she is teaching the children to forget they ever had a father.

Since appellant was advised that the service upon him was absolutely void, he has had no opportunity to prove the facts set forth in this Petition for Rehearing; he has never had his "day in court."

While appellant sincerely regrets the necessity of stating facts not in the record, yet when fraud and perjury defy God's and Man's laws, iron-clad rules should be strained, even broken, in order that our Court of last resort, the United States Supreme Court, protect and preserve the rights of citizens, as guaranteed by our Federal Constitution, and more especially, when the rights of fine, innocent children are violated and destroyed, wilfully and with malice.

WHEREFORE, appellant respectfully prays a rehearing in this cause.

Respectfully submitted,

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